

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF WISCONSIN  
MILWAUKEE DIVISION**

TYRAN PINKINS,

Plaintiff,

V.

Case No.: 19-cv-368

RACINE POLICE OFFICER JOSHUA DIEDERICH, and  
RACINE POLICE OFFICER TODD J. LAUER,

Defendants.

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**MOTION AND BRIEF TO MOVE INTO EVIDENCE  
PLAINTIFF'S EXHIBIT 6 UNDER FED. R. OF EVIDENCE 803**

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The plaintiff seeks to move into evidence Plaintiff exhibit 6, "Racine Police Department's Call Detail Report" under the hearsay exception under Fed. Rule of Evid. 803 regardless of whether the declarant is available as a witness.

The following exceptions are applicable to the public report and should not be excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

**(1)Present Sense Impression.** A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

**(2)Excited Utterance.** A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.

Fed. R. Evid. 803

On similar rationale, another court within the district determined that when "Individual A" called 911 shortly after she was hit, because a startling event occurred, Individual A called 911

while under the stress of the event, and the existence of a gun was established while the dispatcher was questioning Individual A about the event. The court determined that an excited utterance expectation applies in this circumstance. Thus, the recording of Individual A's 911 call was admissible under the hearsay exception recognized in Rule 803(2). *U.S. v. Boyce*, No. 10-CR-533, at \*6 (N.D. Ill. Oct. 26, 2011). While the request from the plaintiff seeks to introduce the report of the 911 call, due to the unavailability of the call itself, such shall not be barred due to the reliability of a public record.

Respectfully Submitted:

Dated this 26<sup>th</sup> day of April, 2023.

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